

**Before the  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

**In re:**

**Joint Application of Birch  
Communications, Inc. and Birch  
Telecom of the South, Inc. for  
Approval of Corporate  
Restructuring**

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**Docket No. \_\_\_\_\_**

**JOINT APPLICATION**

Birch Communications, Inc. (“Birch”) and Birch Telecom of the South, Inc. (“Birch Telecom”) (Birch and Birch Telecom collectively, the “Joint Applicants”) respectfully jointly request authority to undertake an internal corporate reorganization, which will result in the transfer of certain assets and customers from Birch to Birch Telecom, and from Birch Telecom to Birch. This request is made pursuant to SC Code Ann. §§ 58-9-280, 58-9-300 and 58-9-310. For the reasons set forth below, the Joint Applicants respectfully request that the Public Service Commission of South Carolina (“Commission”) approve this Joint Application as soon as possible. In support of their Joint Application, the Joint Applicants respectfully show as follows:

**I. DESCRIPTION OF THE JOINT APPLICANTS**

**A. Birch Communications, Inc.**

Birch is a Georgia corporation with headquarters located at 320 Interstate North Parkway SE, Atlanta, GA 30339. Birch, formerly known as Access Integrated Networks, Inc., was granted authority to provide local and long distance telecommunications services in South Carolina by Order No. 1999-801 issued November 15, 1999, in Docket No. 1999-323-C. On December 18, 2008, the Commission issued Order No. 2008-824 approving Access Integrated Networks, Inc.’s request to change its name to “Birch Communications, Inc.”

Birch recently converted to a limited liability company (“LLC”) in its home state of Georgia effective December 30, 2017. Birch is in the process of amending its registration with the South Carolina Secretary of State from registration as a foreign corporation to registration as a foreign LLC. Once that process is complete, Birch will notify the Commission of its name change to Birch Communications, LLC and will provide updated tariffs reflecting the new name.

**B. Birch Telecom of the South, Inc.**

Birch Telecom is a Delaware corporation with headquarters located at 320 Interstate North Parkway SE, Atlanta, GA 30339. Birch Telecom is authorized by the Commission to provide local exchange and interexchange telecommunications services in South Carolina by Order No. 2000-792 issued September 25, 2000, in Docket No. 2000-0265-C. Birch Telecom is a wholly owned subsidiary of Birch.

Birch Telecom recently converted to a limited liability company (“LLC”) in its home state of Delaware effective December 30, 2017. Birch Telecom is in the process of amending its registration with the South Carolina Secretary of State from registration as a foreign corporation to registration as a foreign LLC. Once that process is complete, Birch Telecom will notify the Commission of its name change to Birch Telecom of the South, LLC and will provide updated tariffs reflecting the new name.

**II. DESIGNATED CONTACTS**

Correspondence, orders, or other material concerning this Joint Application should be directed to:

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### **III. DESCRIPTION OF CORPORATE REORGANIZATION**

On November 30, 2017, BCHI Holdings, LLC, Birch, Fusion Telecommunications International, Inc., and Network Billing Systems, LLC filed a joint notice (“Joint Notice”) with the Commission regarding a transaction that will result in a material change to the ownership and control of Network Billing Systems, LLC (“Fusion Transaction”).<sup>1</sup> The Joint Notice also explained that Birch and Birch Telecom would implement an internal corporate reorganization to segregate their residential and single-line business customers from their large business and cloud service customers with Birch Telecom serving the residential and single-line business customers and Birch serving the large business and cloud service customers.

To accomplish the internal reorganization, any residential and single-line business customers currently served by Birch in South Carolina will be assigned to Birch Telecom. Similarly, any large business and cloud service customers currently served by Birch Telecom in South Carolina will be assigned to Birch. Upon consummation of the Fusion Transaction, Birch Telecom will be spun-off to a newly formed holding company, Lingo Communications, LLC (“Lingo”), which will be owned by the existing owners of Birch and Birch Telecom. The reorganization will be entirely pro forma – both prior to and following the Fusion Transaction -

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<sup>1</sup> Docket Nos. 99-323-C, 13-239-C, and 00-265-C.

as the same Birch shareholders will, at all times, hold a controlling interest in both Birch and Birch Telecom.

The reorganization also will be transparent to customers of both Birch and Birch Telecom as explained further below. Both companies currently operate under the “Birch Communications” name, and customers will continue to receive service from “Birch Communications” in the same way they receive service today. Further, Birch Telecom and Birch will file any necessary tariff revisions to incorporate each other’s current services and rates so that affected customers will continue to receive the same services that they currently receive without any immediate changes to their service offerings or rates.

#### **IV. WAIVER OF ANTI-SLAMMING RULES**

The Joint Applicants respectfully request, to the extent necessary, that the Commission grant a waiver of S.C. Code Ann. § 58-3-230 and any other applicable anti-slamming regulations. A waiver is appropriate in this case given there is no change in provider from the customer perspective. All customers of Birch and Birch Telecom will continue to receive the same services as before, at the same rates, terms and conditions. While the reorganization may involve a change to the specific operating company providing these services, this change will be invisible to customers, as both Birch and Birch Telecom operate under the Birch Communications name. South Carolina customers understand Birch Communications is their carrier today. After the reorganization, Birch Communications will be their provider. Sending a notice to these customers, explaining that their carrier is changing - in effect, that they are being moved from *Birch Communications* to *Birch Communications* – and that nothing about their services is changing, would be confusing and serve no beneficial purpose for the customers. In this regard, the Federal Communications Commission (“FCC”) specifically has found that “a

change in corporate structure that is invisible to the affected subscribers does not constitute a sale or transfer for purposes of section 258 that implicates this streamlined process. . . . Indeed, in such cases, requiring notice of a change that is imperceptible to the affected subscribers might cause confusion where there would otherwise be none.”<sup>2</sup>

## **V. PUBLIC INTEREST ANALYSIS**

The proposed reorganization furthers the public interest, convenience, and necessity as it will advance economic efficiency by enabling the Joint Applicants to expand their businesses and achieve economies of scale. These benefits are expected to strengthen both companies’ ability to expand their service offerings to a broader customer base. The reorganization will facilitate a division of operations, enabling Birch to focus upon delivery of business and cloud services while Birch Telecom will focus on serving residential and smaller business customers. The reorganization also will enable the Joint Applicants to strengthen their competitive position to the benefit of consumers and the telecommunications marketplace in South Carolina.

*[continued on next page]*

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<sup>2</sup> 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, 16 FCC Rcd 11218, ¶ 13, n.24 (2001).

WHEREFORE, for the reasons stated above, the Joint Applicants respectfully request that the Commission grant all authority necessary for the internal corporate restructuring described herein.

Dated this 24th day of January, 2018.

Respectfully submitted,

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